

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROGER PALMER, *et al.*,

Plaintiffs,

v.

STEPHEN SISOLAK, *et al.*,

Defendants.

Case No. 3:21-cv-00268-MMD-WGC

ORDER

**I. SUMMARY**

Plaintiffs<sup>1</sup> challenge sections of the recently enacted Nevada Assembly Bill 286 (“A.B. 286”) that prohibits certain acts relating to firearms not imprinted with serial numbers—commonly referred to as “ghost guns”—alleging that these sections violate the Second Amendment and the Fifth Amendment’s Takings Clause. (ECF No. 1.) Before the Court is Plaintiffs’ motion for a preliminary injunction (ECF No. 6 (“Motion”)),<sup>2</sup> seeking to enjoin Defendants<sup>3</sup> from enforcing A.B. 286. Because Plaintiffs have not shown a likelihood of success on the merits of their claims—and as further explained below—Plaintiffs are not entitled to the extraordinary remedy of preliminary injunction. The Court will therefore deny Plaintiffs’ Motion.

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<sup>1</sup>Plaintiffs are Roger Palmer, Chad Moxley (together, “Individual Plaintiffs”), and the Firearms Policy Coalition, Inc. (collectively, “Plaintiffs”).

<sup>2</sup>The Court has additionally reviewed the parties’ corresponding responses and replies. (ECF Nos. 25, 28, 31, 32, 40.) The Court also heard arguments on the Motion on July 16, 2021 (“the Hearing”). (ECF No. 48.)

<sup>3</sup>Defendants are Nevada Governor Steven Sisolak; Attorney General Aaron Ford; Director of Public Safety George Togliatti; Division Administrator for Department of Public Safety’s Records, Communications and Compliance Division Mindy McKay (together, “State Defendants”); Clark County Sheriff Joseph Lombardo; Clark County District Attorney Steven Wolfson; Douglas County Sheriff Daniel Coverley; and Douglas County District Attorney Mark Jackson (collectively, “Defendants”).

## 1      **II.      BACKGROUND**

2            Plaintiffs Roger Palmer and Chad Moxley, both citizens of Nevada, own and  
 3      possess multiple unserialized firearms and previously self-manufactured unserialized  
 4      constituent parts. (ECF No. 1 at 5, 20-21, 24.) Palmer owns and possesses multiple  
 5      uncompleted non-firearm objects and firearm building kits. (*Id.* at 21.) Moxley sells  
 6      firearms and constituent firearm parts at local gun shows and seeks to continue selling  
 7      unserialized firearms constituent parts and other non-firearm objects. (*Id.* at 23-24.)  
 8      Moxley made arrangements prior to the enactment of A.B. 286 to attend six or more gun  
 9      shows before the end of the year. (*Id.* at 23.) Palmer and Moxley are both members of  
 10     the Firearms Policy Coalition, Inc. (“FPC”). (*Id.* at 20, 23.) FPC’s stated purpose is to  
 11     defend and promote Second Amendment rights to keep and bear arms. (*Id.* at 26.)

12            On June 7, 2021, Nevada’s Governor Stephen Sisolak signed A.B. 286 into law.  
 13     (*Id.* at 1.) At a May 11, 2021, pre-enactment hearing, Assemblywoman Sandra  
 14     Jauregui—a sponsor of A.B. 286—made public statements about the law’s purpose. (*Id.*  
 15     at 17, 20, 33, 35.) With its enactment, A.B. 286 amended Chapter 202 of the Nevada  
 16     Revised Statutes to prohibit “a person from engaging in certain acts relating to firearms  
 17     which are not imprinted with a serial number under certain circumstances[.]” A.B. 286,  
 18     2021 Leg., 81st Sess. (Nev. 2021).

19            This litigation centers on certain sections A.B. 286 added to Chapter 202, which  
 20     are as follows:

21            *Section 3* states in part that a person “shall not possess, purchase, transport or  
 22     receive an unfinished frame or receiver[.]” *Id.* at § 3(1).

23            *Section 3.5* states in part that a person “shall not sell, offer to sell or transfer an  
 24     unfinished frame or receiver[.]” *Id.* at § 3.5(1).

25            *Section 4* states in part that a person “shall not manufacture or cause to be  
 26     manufactured or assemble or cause to be assembled a firearm that is not imprinted with  
 27     a serial number” unless the firearm is: (a) rendered permanently inoperable, (b) an  
 28     antique firearm, or (c) determined to be a collector’s item. *Id.* at §§ 4(1); 4(1)(a)-(c).

1        *Section 5* states in part that a person “shall not possess, sell, offer to sell,  
 2        transfer, purchase, transport or receive a firearm that is not imprinted with a serial  
 3        number” unless the person is a (a) law enforcement agency, (b) firearms importer or  
 4        manufacturer; or the firearm is: (a) rendered permanently inoperable, (b) manufactured  
 5        before 1969, (c) an antique firearm, or (d) determined to be a collector’s item. *Id.* at §§  
 6        5(1); 5(1)(a)-(b).

7        *Section 5.5* further provides: “Nothing in the provisions of sections 3 to 5,  
 8        inclusive, of this act shall be deemed to prohibit the sale of an unfinished frame or  
 9        receiver or firearm that is not imprinted with a serial number to a firearms importer or  
 10       manufacturer or a license dealer before January 1, 2022.” *Id.* at § 5.5.

11       A person in violation of any part of §§ 3-5 is guilty of a gross misdemeanor for a  
 12       first offense and a category D felony for a second or any subsequent offense. *Id.* at §§  
 13       3-5. Sections 3 and 5 become effective on January 1, 2022. *Id.* § 10(2).

14       Plaintiffs seek a preliminary injunction to enjoin enforcement of A.B. 286 pending  
 15       a decision on the merits.

### 16       **III.       LEGAL STANDARD**

17       “‘An injunction is a matter of equitable discretion’ and is ‘an extraordinary remedy  
 18       that may only be awarded upon a clear showing that the plaintiff is entitled to such  
 19       relief.’” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (quoting *Winter v.*  
 20       *Nat. Res. Def. Council*, 555 U.S. 7, 22, 32 (2008)). To qualify for a preliminary  
 21       injunction, a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) a  
 22       likelihood of irreparable harm; (3) that the balance of equities favors the plaintiff; and (4)  
 23       that the injunction is in the public interest. *Winter*, 555 U.S. at 20. “When the  
 24       government is a party, the last two factors (equities and public interest) merge.” *E. Bay*  
 25       *Sanctuary Covenant v. Biden*, 993 F.3d 640 (9th Cir. 2021) (parentheses in original).  
 26       A plaintiff may also satisfy the first and third prongs under a “sliding scale” approach by  
 27       showing serious questions going to the merits of the case and that a balancing of  
 28       hardships tips sharply in plaintiff’s favor. *All. for the Wild Rockies v. Cottrell*, 632 F.3d

1 1127, 1134-35 (9th Cir. 2011) (holding that the Ninth Circuit’s “sliding scale” approach  
 2 remains valid following the *Winter* decision).

### 3 **IV. DISCUSSION**

4 Plaintiffs contend A.B. 286 violates their rights under the Second Amendment  
 5 and the Fifth Amendment’s Takings Clause. The Court will first address Plaintiffs’  
 6 Second Amendment arguments, then will address their Takings Clause arguments.  
 7 Because the Court finds that Plaintiffs have failed to demonstrate a likelihood of  
 8 success on the merits on either claim, the Court will deny the Motion.<sup>4</sup>

#### 9 **A. Second Amendment Claim**

10 The Second Amendment expressly states: “A well regulated Militia, being  
 11 necessary to the security of a free State, the right of the people to keep and bear Arms,  
 12 shall not be infringed.” U.S. Const. amend. II. In 2008, the United States Supreme Court  
 13 held in *District of Columbia v. Heller* that the Second Amendment protects the  
 14 “individual right to keep and bear arms.” 554 U.S. 570, 622. The “central component” of  
 15 that right to bear arms is for self-defense, particularly defense of the home. *Id.* at 599,  
 16 628-29. However, the Court also cautioned that, “[l]ike most rights, the right secured by  
 17 the Second Amendment is not unlimited” and historically speaking “the right was not a  
 18 right to keep and carry any weapon whatsoever in any manner whatsoever and for  
 19 whatever purpose.” *Id.* at 626.<sup>5</sup> The Court later held that the Second Amendment is also  
 20 fully applicable to states and municipalities through the Fourteenth Amendment. See  
 21 *McDonald v. City of Chicago*, 561 U.S. 742, 790-91 (2010).

22 The Ninth Circuit has adopted a two-step framework to evaluate Second  
 23 Amendment claims after *Heller* and *McDonald*, as exemplified in its recent decision in  
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25 <sup>4</sup>The Court notes that the equities and public interest considerations of the  
 26 *Winters* factors weigh heavily in favor of State Defendants in light of their articulated  
 objective of promoting public safety.

27 <sup>5</sup>In *Heller*, the Supreme Court indicated that determining the scope of the Second  
 28 Amendment’s protection requires a historical and textual analysis of the Amendment,  
 see *id.* at 576-605, but the Court also declined to undertake an exhaustive historical  
 analysis of the full scope of the Amendment, see *id.* 626-27.

1 *Young v. Hawaii*, 992 F.3d 765, 783-84 (2021) (en banc).<sup>6</sup> The two-step inquiry requires  
 2 courts to ask (1) whether the challenged law burdens conduct protected by the Second  
 3 Amendment and (2) if the law burdens protected Second Amendment conduct, then the  
 4 second step requires determining the appropriate level of scrutiny and applying it to the  
 5 challenged law. See *Young*, 992 F.3d at 783-84.

6 “The level of scrutiny depends upon (1) how close the law comes to the core of  
 7 the Second Amendment right, and (2) the severity of the law’s burden on the right.”  
 8 *Jackson*, 746 F.3d at 963 (internal quotes and citation omitted). Courts must look at the  
 9 “historical understanding of the scope of the right.” *Young*, 992 F.3d at 783 (quoting  
 10 *Heller*, 554 U.S. at 625). A law that imposes a severe restriction on a core right, which  
 11 destroys the protection of the Second Amendment, is “unconstitutional under any level  
 12 of scrutiny.” *Jackson*, 746 F.3d at 961 (citing *Heller*, 554 U.S. at 629). “[I]f a challenged  
 13 law does not implicate a core Second Amendment right, or does not place a substantial  
 14 burden on the Second Amendment right, [courts] may apply intermediate scrutiny.” *Id.*  
 15 “[A]ll forms of the [intermediate scrutiny] standard require (1) the government’s stated  
 16 objective to be significant, substantial, or important; and (2) a *reasonable fit* between the  
 17 challenged regulation and the asserted objective.” *Id.* at 965 (emphasis added) (quoting  
 18 *Chovan*, 735 F.3d at 1129).

### 19 **1. Burden on Protected Conduct**

20 Plaintiffs argue that the Court should evaluate the constitutionality of A.B. 286  
 21 with strict scrutiny because the rights guaranteed under the Second Amendment to bear  
 22 arms has always included “the right to self-manufacture such arms.” (ECF No. 6 at 10-  
 23 12.) Because A.B. 286 infringes on that “core” right, Plaintiffs insist it is unconstitutional  
 24 under any level of scrutiny. (*Id.* at 13-16.) State Defendants counter that A.B. 286 does  
 25 not burden Second Amendment rights because it does not interfere with the right to self-  
 26 defense in the home, nor does it strip persons from access to serialized firearms for

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27 <sup>6</sup>See also *Silvester v. Harris*, 843 F.3d 816, 820-21 (9th Cir. 2016); *Peruta v.*  
 28 *Cnty. of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016); *Jackson v. City & Cnty. of San*  
*Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014); *United States v. Chovan*, 735 F.3d  
 1127, 1136 (9th Cir. 2013).

1 defense of their homes.<sup>7</sup> (ECF No. 31 at 11.) Therefore, State Defendants assert that  
 2 intermediate scrutiny should apply to A.B. 286. (*Id.*) The Court agrees with State  
 3 Defendants.

4 The focus of the analysis as stated in *Heller* requires the Court to determine  
 5 whether A.B. 286 burdens the “central component” of the right to bear arms for self-  
 6 defense in the home. See 554 U.S. at 599, 628-29. As it stands, A.B. 286 regulates  
 7 firearms that are not imprinted with serial numbers—the law therefore “does not  
 8 interfere with the right to ‘defense of hearth and home’” because Individual Plaintiffs’  
 9 ability to use any and all serialized firearms to defend their homes remains unchanged.  
 10 (ECF No. 31 at 11 (quoting *Heller*, 554 U.S. at 635).) *Cf. Jackson*, 746 F.3d at 968 (“A  
 11 ban on the sale of certain types of ammunition does not prevent the use of handguns or  
 12 other weapons in self-defense. The regulation . . . limits only the manner in which a  
 13 person may exercise Second Amendment rights by making it more difficult to purchase  
 14 certain types of ammunition.”).

15 Moreover, A.B. 286 does not completely prohibit, as Plaintiffs suggest, the right  
 16 to self-manufacture firearms but rather prohibits self-manufacturing of *unserialized*  
 17 firearms. A.B. 286 § 4(1) (“a person shall not manufacture . . . a firearm that is not  
 18 imprinted with a serial number”); see also § 4(1)(a)-(c), (exceptions). Under A.B. 286,  
 19 Individual Plaintiffs are not stripped of an opportunity to self-manufacture and assemble  
 20 firearms and constituent parts so long as they are serialized or fall within § 4(1)(a)-(c)  
 21 exceptions. Plaintiffs affirmed this point at the Hearing when they stated that a person  
 22 could still acquire a serialized firearm from a licensed seller under A.B. 286 for defense  
 23 of self and home. (ECF No. 48.) Accordingly, the Court finds that A.B. 286 does not  
 24 severely burden Second Amendment protected conduct, but merely regulates it.  
 25 Intermediate scrutiny rather than strict scrutiny is therefore appropriate for the Court’s

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26 <sup>7</sup>State Defendants dispute that A.B. 286 burdens Second Amendment protected  
 27 conduct because the requirement that firearms be serialized is a “longstanding,  
 28 presumptively lawful regulation.” (ECF No. 31 at 10-11.) In light of the Supreme Court’s  
 decision in *Heller* to not undertake an exhaustive historical analysis of the full scope of  
 the Second Amendment, and in consideration of the limited historical facts presented,  
 this Court declines to consider this argument at this early phase of the litigation.

1 analysis of A.B. 286. See *Young*, 992 F.3d at 784 (stating that intermediate scrutiny  
2 applies in cases where Second Amendment rights are “affected in some lesser way”).

## 3                   **2.       Stated Objective and Reasonable Fit**

4           Plaintiffs argue that, even if the Court applies intermediate scrutiny, A.B. 286 is  
5 unconstitutional because the restraint must be reasonably proportional and closely  
6 drawn to the government’s interests. (ECF No. 6 at 15.) As such, Plaintiffs assert that  
7 A.B. 286 does not meet this requirement because it is a blanket ban on unserialized  
8 firearms and constituent parts. (*Id.* at 15-16.) State Defendants counter that A.B. 286  
9 survives intermediate scrutiny because the law is a “reasonable fit” for the important  
10 government goal of preserving the ability of law enforcement to conduct firearm tracing  
11 by limiting the availability of non-traceable firearms. (ECF No. 31 at 12.) The Court  
12 again agrees with State Defendants.

13           In analyzing the first prong of intermediate scrutiny review, the Court must  
14 determine whether the government’s stated objective is significant, substantial, or  
15 important. See *Jackson*, 746 F.3d at 965. State Defendants cite to a congressional  
16 report that concludes unserialized firearms are a present and increasing threat to public  
17 safety because they present a “homeland security challenge” and they “hamstring[ ] law  
18 enforcement’s ability to investigate crimes committed with untraceable weapons.” (ECF  
19 No. 31 at 7 (quoting H.R. Rep. No. 116-88, pt. 1, at 2 (2019).) State Defendants further  
20 note that law enforcement agencies recovered nearly 24,000 privately made firearms,  
21 without serial numbers on the frame or receiver, from crime scenes between 2016 and  
22 2020. (*Id.* (citing Definition of “Frame or Receiver” and Identification of Firearms, 86  
23 Fed. Reg. 27720,27722 (May 21, 2021) (to be codified at 27 C.F.R. pts. 447, 478, 479)).  
24 The Court in considering the government’s stated objectives will not impose “an  
25 unnecessarily rigid burden of proof . . . so long as whatever evidence the [government]  
26 relies upon is reasonably believed to be relevant to the problem that the [government]  
27 addresses.” *Jackson*, 746 F.3d at 965 (quoting *Renton v. Playtime Theatres*, 475 U.S.  
28 41, 50-52 (1986)).



1 Here, A.B. 286 prohibits “a person from engaging in certain acts relating to  
 2 firearms which are not imprinted with a serial number.” A.B. 286, 2021 Leg., 81st Sess.  
 3 (Nev. 2021). When the Nevada Legislature considered A.B. 286, Assemblywoman  
 4 Sandra Jauregui—a sponsor of the Bill—echoed Congress’ concerns when she stated  
 5 that unserialized firearms are a threat to public safety because they circumvented  
 6 background checks and they are untraceable if used in a crime. (ECF No. 31 at 7 (citing  
 7 *Prohibits Certain Acts Relating to Firearms: Hearing on A.B. 286 Before Senate Comm.*  
 8 *on Judiciary*, 81st Session (May 11, 2021) (statement of Sandra Jauregui,  
 9 Assemblywoman)). Moreover, Assemblywoman Jauregui “explained that ghost guns are  
 10 an especially acute threat to Nevada because one of the largest unfinished receiver kit  
 11 companies in the nation, Polymer80, Inc. is based [in Nevada].” (*Id.*)

12 The Court finds that public safety is an important government interest, and “it is  
 13 self-evident.” *Chovan*, 735 F.3d at 1139; *see also Jackson*, 746 F.3d at 965. Moreover,  
 14 the government’s interest in preserving law enforcement’s ability to investigate crimes  
 15 committed with untraceable weapons is also a substantial and important government  
 16 interest. *See Pena v. Lindley*, 898 F.3d 969, 981-82 (9th Cir. 2018) (holding that a  
 17 California law requiring new models of semiautomatic pistols to be imprinted with  
 18 characters, including a serial number, passed constitutional muster under intermediate  
 19 scrutiny because “preserving the ability of law enforcement to conduct serial number  
 20 tracing—effectuated by limiting the availability of untraceable firearms—constitutes a  
 21 substantial or important interest.”). As such, State Defendants have sufficiently shown  
 22 that the government’s objectives in enacting A.B. 286 are substantial and important,  
 23 thus satisfying the first prong of intermediate scrutiny.

24 The second prong of intermediate scrutiny requires a determination that A.B.  
 25 286’s regulations be a “reasonable fit” with the government’s asserted objectives.<sup>8</sup>

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 27 <sup>8</sup>At the Hearing, Plaintiffs argue that A.B. 286 must be “narrowly tailored” to the  
 28 government’s stated interest. But Plaintiffs appear to apply strict scrutiny. While courts  
 have used various terminology to describe the intermediate-scrutiny standard, as  
 discuss above, the government must show “a *reasonable fit* between the challenged  
 regulation and asserted objective” under intermediate scrutiny. *Jackson*, 746 F.3d at



1 *Jackson*, 746 F.3d at 965. States Defendants articulate that A.B. 286 “addresses the  
 2 threat posed by unserialized firearms and firearm components.” (ECF No. 31 at 7-8.) A  
 3 plain text reading of A.B. 286 affirms that it does so by prohibiting the possession  
 4 and sale of firearms and constituent parts that lack serial numbers. It also prohibits a  
 5 person from manufacturing or assembling an unserialized firearm unless it falls within a  
 6 categorical exception, see § 4(1)(a)-(c). Moreover, A.B. 286 prohibits the possession of  
 7 unserialized firearm unless an exception applies, see § 5(1)(a)-(b).

8 Because A.B. 286 targets only unserialized firearms that are not within a  
 9 categorical exception, that bypass background checks by virtue of self-assembly, and  
 10 that are untraceable without a serial number, the Court finds that A.B. 286 is a  
 11 reasonable fit for achieving the government’s objectives of decreasing the threat that  
 12 unserialized firearms pose to public safety and preserving law enforcement’s ability to  
 13 trace firearms related to violent crimes. Accordingly, State Defendants have met their  
 14 burden under the second prong and A.B. 286 satisfies intermediate scrutiny.

15 Plaintiffs challenged State Defendants’ asserted objectives, contending that State  
 16 Defendants offered no evidence that tracing firearms reduces crimes or increases public  
 17 safety. (ECF No. 40 at 9.) Similar to the Court’s finding above that “it is self-evident” that  
 18 public safety is an important government interest, it is a matter of common sense that  
 19 tracing of firearms aid in solving crimes which enhances public safety. Since the Gun  
 20 Control Act of 1968 (“GCA”) began to require licensed importers and manufacturers to  
 21 identify each firearm with a serial number, see Identification Markings Placed on

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22  
 23 965 (quotes omitted, emphasis added). Intermediate scrutiny is not a strict test, and the  
 24 Ninth Circuit has said that “intermediate scrutiny does not require the least restrictive  
 25 means of furthering a given end.” *Silvester*, 843 F.3d at 827 (quoting *Jackson*, 746 F.3d  
 26 at 966); see also *Altman v. Cnty. of Santa Clara*, 464 F. Supp. 3d 1106, 1129 (N.D. Cal.  
 2020 (“The Ninth Circuit, however, does not require narrow tailoring for firearm  
 regulations subject to intermediate scrutiny.”).) Accordingly, A.B. 286 need not be  
 narrowly tailored to the government’s stated interest.

27 Additionally, Plaintiffs further argue that less burdensome means of regulating  
 28 self-manufacture firearms, such as background checks, are available and that there are  
 less restrictive means of requiring serialization. (ECF No. 40 at 8, 11.) But “intermediate  
 scrutiny does not require the least restrictive means of furthering a given end.” *Jackson*,  
 746 at 969.

Firearms, 66 Fed. Reg. 40,596, 40,597 (Aug. 3, 2001) (codified at 27 C.F.R. pt. 178.92), firearms tracing has become a critical tool for modern firearms investigations and prosecution. In addition to the serial number, GCA's requirement that records be kept of the acquisition and dispositions of the firearm, along with its description, enables firearms to be uniquely identifiable and traceable. *Id.*; see also GCA, § 101, Pub. L. No. 90-618, 82 Stat. 1223 (codified as amended at 18 U.S.C. § 923(i)) (adding a recordkeeping requirement to existing regulatory scheme). When a firearm is stolen, the lawful owner files a police report that includes a serial number and description of the firearm. When the firearm reappears at a crime scene, investigators can accurately trace the firearm's history thereby determining if the firearm was stolen. These protections aid law enforcement in prosecuting persons who are in possession of a stolen firearm and countless other crimes.<sup>9</sup> Serialization and identification of firearms are therefore crucial to public safety. As such, the Court finds that State Defendants need not offer more specific evidence to show that tracing firearms reduces crime or increases public safety as common sense dictates otherwise.

In sum, Plaintiffs have not met their burden to show a likelihood of success on the merits of their Second Amendment claim to warrant a preliminary injunction.

### **B. Fifth Amendment's Takings Clause**

The Takings Clause of the Fifth Amendment provides: [N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The Clause is made applicable to states through the Fourteenth Amendment. See *Chi., B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897). A physical taking of property occurs "[w]hen the government physically takes possession of an interest in the property for some public purpose." *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002). When a government regulation of private property becomes so

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<sup>9</sup>See Andrew W. Eichner, *Crime in the Age of Printable Guns: Methodologies and Obstacles to Prosecuting Federal Offenses Involving 3D-Printed Firearms*, 45 Vt. L. Rev. 189, 212-15 (2020) (discussing firearm tracing as a solution to deterring gun violence).

1 onerous and thus “goes too far[,] it will be recognized as a taking.” *See Pa. Coal Co. v.*  
 2 *Mahon*, 260 U.S. 393, 415-16 (1922).

3 The Supreme Court has articulated two guidelines relevant to determining  
 4 whether a government regulation is onerous. *See Murr v. Wisconsin*, 137 S. Ct. 1933,  
 5 1942-43 (2017). “First, with certain qualifications . . . a regulation which denies all  
 6 economically beneficial or productive use of [property] will require compensation under  
 7 the Takings Clause. Second, when regulation impedes the use of property without  
 8 depriving the owner of all economically beneficial use, a taking still may be found based  
 9 on *a complex of factors*, including (1) the economic impact of the regulation on the  
 10 claimant; (2) the extent to which the regulation has interfered with distinct investment-  
 11 backed expectations; and (2) the character of the governmental action.” *Id.* (emphasis  
 12 added and quotation marks omitted) (citing *Penn Central Transp. Co. v. New York City*,  
 13 438 U.S. 104, 124 (1978)).

#### 14 **1. Regulatory Taking**

15 Plaintiffs argue that enforcement of A.B. 286 would regulate the firearms and  
 16 parts to such an extent that it would deprive persons of its use and economic benefits in  
 17 violation of the Takings Clause. (ECF No. 6 at 16.) State Defendants counter that the  
 18 government need not provide a just compensation when A.B. 286 is a valid law  
 19 prohibiting possession of unserialized firearms and constituent parts. (ECF No. 31 at  
 20 13.) The Court finds State Defendants’ argument more persuasive.

21 A.B. 286 prohibits possession of firearms and its constituent parts not imprinted  
 22 with serial numbers. A.B. 286 requires that persons in Nevada sell the disputed items to  
 23 a firearms importer, manufacturer, or a license dealer before January 1, 2022. It does  
 24 not, however, prohibit persons from the use or benefit of those items outside of Nevada  
 25 before or after January 1, 2022. Nor does A.B. 286 prohibit unserialized firearm  
 26 possession if it falls within § 5(1)(a)-(b) exceptions. As such, the Court finds that A.B.  
 27 286 does not deny all economically beneficial or productive use of unserialized firearms

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1 and constituent parts as Plaintiffs contend. The Court therefore must turn to the  
2 “complex factors” as originally set forth in *Penn Cent. Transp. Co.*, 438 U.S. at 124.

3 In their Motion, Plaintiffs state that A.B. 286 “has destroyed or significantly  
4 diminished the value of the property to any would-be purchasers and has thus  
5 destroyed the very market to which it has relegated the affected citizens.” (ECF No. 6 at  
6 17.) Moxley—a seller of firearms and constituent parts—declares that he had made  
7 arrangements to attend six gun shows by the end of the year whereby he would have  
8 “made available for sale and sold firearm components now prohibited from commercial  
9 sale under [A.B. 286].” (ECF Nos. 1 at 23; 6-2 at 3.)

10 While the Court is sympathetic to the economic loss Plaintiffs assert, it is not  
11 clear based on the record the extent or certainty of that economic loss. Because A.B.  
12 286 provides an approximate 10-month period for persons to sell unserialized firearms  
13 and constituent parts to firearms importers, manufacturers, or licensed dealers  
14 beginning June 7, 2021, the possibility of recouping a potential economic loss was—and  
15 remains as of the date of this order—possible. In the same vein, nothing in A.B. 286  
16 prohibits Moxley and others similarly situated from selling unserialized firearms and  
17 constituent parts at gun shows or to individuals outside of Nevada where the value will  
18 likely not be impacted by A.B. 286 to recoup any alleged economic loss. Therefore, the  
19 economic impact of A.B. 286 and the extent to which A.B. 286 interferes with distinct  
20 investment-backed expectations remains undetermined. The Court will next turn to “the  
21 character of the governmental action.”

22 As stated previously, A.B. 286 was enacted to ensure public safety and preserve  
23 the ability of law enforcement to investigate crimes through firearm tracing. Without  
24 serial numbers, firearms and constituent parts circumvent and bypass background  
25 checks. Inherent in State Defendants’ “valid law” counterargument is that A.B. 286 is an  
26 appropriate exercise of the government’s police power.

27 The Court agrees with State Defendants that A.B. 286 is a valid exercise of the  
28 government’s police power. The police power exception to the Takings Clause provides

1 that “[a] prohibition simply upon the use of property for purposes that are declared, by  
 2 valid legislation, to be injurious to the health, morals, or safety of the community,  
 3 cannot, in any just sense, be deemed a taking.” *Mugler v. Kansas*, 123 U.S. 623, 668  
 4 (1887). “If [an] ordinance is otherwise a valid exercise of the [government’s] police  
 5 powers, the fact that it deprives the property of its most beneficial uses does not render  
 6 it unconstitutional.” *Goldblatt v. Hempstead*, 369 U.S. 590, 592 (1962) (collecting  
 7 cases). Public safety and the importance of firearm tracing necessitates the prohibition  
 8 of Individual Plaintiffs’ unserialized firearms and constituent parts at issue, and thus not  
 9 a taking.

10 Moreover, the Court is unaware of—and the parties have not pointed to—any  
 11 binding Ninth Circuit case explicitly discussing police power exception to the Takings  
 12 Clause where government regulates firearms.<sup>10</sup> However, several other courts have  
 13 applied this principle in finding that firearm regulations do not constitute a taking. See  
 14 *Adkins v. United States*, 82 Fed. Cl. 619, 623-24 (2008) (holding that prohibition on the  
 15 sale of machine guns to anyone other than law enforcement agencies did not constitute  
 16 a physical or regulatory taking); *Fesjian v. Jefferson*, 399 A.2d 861 (D.C. 1979) (holding  
 17 that a statute requiring machine guns denied registration be sold, surrendered, or  
 18 disposed, was a valid exercise of police power thereby not a taking); *Rupp v. Becerra*,  
 19 Case No. 8:17-cv-00746-JLS-JDE, 2018 WL 2138451, \*8-\*9 (C.D. Cal. May 9, 2018)  
 20 (dismissing a Takings claim on the grounds that a California prohibition on certain  
 21 weapons represented an exercise of police power and not a taking). Accordingly, and in  
 22 consideration of the previous complex factors discussed herein, the Court finds that  
 23 A.B. 286 does not constitute a regulatory taking.

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26  
 27 <sup>10</sup>The Court notes that the Ninth Circuit was presented with a similar Takings  
 28 claim in *Duncan v. Becerra*, 742 F. App’x 218 (9th Cir. 2018). That case, however, is not  
 binding precedent on this Court. Moreover, the Ninth Circuit affirmed the district court’s  
 findings on a deferential abuse of discretion standard. The Court finds the guidance  
 from *Duncan* inconclusive as applied to the facts of this case.

## 2. Physical Taking

Plaintiffs also argue that A.B. 286 is “an unconstitutional deprivation of their property interest” in violation of the Fifth Amendment’s Takings Clause by requiring unserialized firearms and constituent parts to be sold or transferred. (ECF No. 6 at 16.) Plaintiffs further argue that the government has a duty to provide just compensation and that just compensation is impossible through “any government-compelled sale.” (*Id.*) State Defendants counter that the government is not taking title to the property at issue. (ECF No. 31 at 13.) The Court is not persuaded that A.B. 286 is a physical taking that would require the government to provide just compensation.

The Takings Clause expressly prohibits the taking of “private property . . . for public use, without just compensation.” U.S. Const. amend. V (emphasis added). Here, §§ 3 and 5 of A.B. 286—prohibiting the possession of unserialized firearms and constituent parts—will become effective on January 1, 2022. Nowhere in A.B. 286 does it expressly state, nor can it be implied, that the government is compelling the conveyance of the disputed property for public use. Nor are persons denied possession or use of unserialized firearms, if they or the disputed property, fall within an exception as set forth in § 5(1)(a)-(b). Additionally, pursuant to § 5.5, persons in Nevada can sell the disputed property to a firearms importer, manufacturer, or a license dealer prior to January 1, 2022, but the value for the property is paid by the buyers and not the government. As such, the Court does not find that the government is physically appropriating Individual Plaintiffs’ property, or property of persons similarly situated, to constitute a physical taking.

The Court’s analysis would not change even if A.B. 286 did authorize a physical taking. In contrast to situations where a taking is for a public use under the government’s eminent domain power, just compensation is not required when the government uses its police power to prevent a perceived public harm. See, e.g., *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992) (discussing eminent domain); *Mugler*, 123 U.S. at 668-669 (discussing police power exception). To their own

1 detriment, Plaintiffs point out that the government is not providing a just compensation  
2 and a government-compelled sale cannot fulfill this requirement. (ECF No. 6 at 16-17.)  
3 This further suggests that A.B. 286 is more appropriately analyzed under a regulatory  
4 rather than a physical taking, and, as the Court discussed above, that argument is  
5 legally infirm.

6 Accordingly, the government cannot be said to be engaging in a physical or  
7 regulatory taking of Plaintiffs' property in violation of the Takings Clause by virtue of  
8 enacting and enforcing A.B. 286. Because Plaintiffs have not shown a likelihood of  
9 success on the merits with respect to their Fifth Amendment Takings Clause claim,  
10 Plaintiffs are not entitled to a preliminary injunction.

#### 11 **V. CONCLUSION**

12 The Court notes that the parties made several arguments and cited to several  
13 cases not discussed above. The Court has reviewed these arguments and cases and  
14 determines that they do not warrant discussion as they do not affect the outcome of the  
15 Motion and the issues before the Court.

16 It is therefore ordered that Plaintiffs' motion for a preliminary injunction (ECF No.  
17 6) is denied.

18 DATED THIS 26<sup>th</sup> Day of July 2021.

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21   
22 MIRANDA M. DU  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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